

REMARKS

With this amendment, Applicant adds claims 38-47. Claims 1-47 are all the claims pending in the application.

1. Claim Rejections Under 35 U.S.C. § 103

The Examiner has rejected claims 1, 4, 7, 10 and 13-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,578,014 to Murcko, Jr. (“Murcko”) in view of U.S. Patent No. 4,926,325 to Benton *et al.* (“Benton”). For at least the following reasons, Applicant traverses the rejection.

Claim 1 recites a commodity order issuing and accepting method that comprises “inputting said order issuer's payment date into said second input field on said order issuing device [and] transmitting said order issuer's payment date to said order accepting device.”

The Examiner contends that Buyer Views Items Page 1800 (Fig. 18 of Murcko) corresponds to the claimed second electronic document, but concedes that Murcko does not disclose the claimed second input field. However, the Examiner applies Benton to allegedly cure the deficiency. The Examiner contends that one skilled in the art would modify the system of Murcko to incorporate inputting a payment date “in order to provide the buyer payment options” and cites col. 16, lines 30-33, of Benton. (Office Action at page 4.)

Murcko relates to a method of purchasing information or products upon receipt of the product, i.e., “sellers [] provide items to buyers without guarantee of a specific payment

amount.” (Abstract.) The “buyers [] decide how much to pay for those items after having received them.” (Id.)

Benton relates to financial transactions between buyers and sellers using at least one facsimile machine. (Abstract.) The “buyer payment options” in Benton merely relate to proceeding with the transaction immediately or setting a subsequent date and time for the proposed transaction. Benton discloses that the subsequent date and time would correspond to reduced telephone line charges. (Col. 16, lines 30-35, of Benton.) Accordingly, the “buyer payment options” merely refer to when the buyer wants to make the actual sale.

In Murcko, the seller provides the product without a guarantee of payment. (Col. 3, lines 1-3.) Accordingly, the actual “sale” would be when the seller ships the product or when the buyer receives the product. After receiving the product, the buyer in Murcko enters a payment amount that the buyer decides. (Col. 22, lines 63-67, Abstract.)

Therefore, the entering of the payment amount in Buyer Views Items Page 1800 is done after the “sale.” Accordingly, modifying the Buyer Views Items Page 1800, as implicitly suggested by the Examiner, to include Benton’s “buyer payment options,” which refer to when a sale is to be made, would not be beneficial to the system in Murcko since the sale has already been made by the time the buyer enters the payment amount.

Therefore, for at least the reasons given above, Applicant submits that one skilled in the art would not have combined the teachings as suggested by the Examiner, and the Examiner has failed to make a *prima facie* case of obviousness.

Because claims 4, 7, 10 and 37 recite features analogous to those given above with respect to claim 1 and because the Examiner's rejection of these claims is identical to that given above with respect to claim 1, Applicant submits that claims 4, 7, 10 and 37 are patentable for at least reasons analogous to those given above with respect to claim 1.

Applicant submits that claims 13-36 are patentable at least by virtue of their respective dependencies.

In addition, claims 29-32 recite that "the transaction condition is a formula related to a commodity transaction." In a telephonic interview conducted on September 7, 2006, the Examiner contends that a buyer's request for a specific item, a buyers question about a specific item with a seller's answer and conditions such as a method of delivery for an item correspond to a transaction condition as set forth in independent claims 1, 4, 7, 10 and 37. Specifically, the Examiner contends that items 1804, 1814 and 1816 of Buyer View Items Page 1800, the alleged second electronic document, correspond to the claimed the transaction condition.

The Examiner also contends that the buyer cutoff percentile corresponds to the claimed formula as set forth in claims 29-32.

Murcko discloses that that the cutoff percentile is the minimum percentile cutoff of eligible sellers with respect to the average payments received for items. (Col. 20, lines 15-21.)

Applicant submits that the average payment received by a seller is not an item that can be requested, a buyer's question, a seller's answer or a method of delivery of an item. Specifically, the cutoff percentile is not one of the alleged "transaction conditions" displayed on Buyer View

Items Page 1800. In fact, cutoff percentile 1720 is displayed on Buyer Item Request Form 1700, not Buyer View Items Page 1800. Accordingly, Applicant submits that the Examiner has improperly shifted the meaning of the claimed transaction condition between the independent claims and their corresponding dependent claims.

Therefore, even if, for the sake of argument alone, Buyer View Items Page 1800 corresponds to the claimed second electronic document, Applicant submits that, because the cutoff percentile 1720 is not displayed on Buyer View Items Page 1800, the cutoff percentile cannot correspond to the claimed formula. Accordingly, claims 1/29, 4/30, 7/31 and 10/32 are patentable for this additional reason.

The Examiner has rejected claims 2, 3, 5, 6, 8, 9, 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Murcko in view of Benton and U.S. Patent Number 6,314,406 to O'Hagen ("O'Hagen"). For at least the following reasons, Applicant traverses the rejection.

Applicant submits that O'Hagen does not make obvious the combination of Murcko and Benton. Therefore, claims 2, 3, 5, 6, 8, 9, 11 and 12 are patentable at least by virtue of their respective dependencies.

In addition, the Examiner relies on O'Hagen to teach the subject matter of claims 2, 3, 5, 6, 8, 9, 11 and 12. The Examiner contends that "it would have been obvious ... to modify the combination, to include calculating a reduced price, as taught by O'Hagen, in order to obtain a discount on a product." (Office Action at page 7.)

Applicant submits that such a modification is not only not obvious, but unnecessary. The system in Murcko is designed for post-transaction-priced transactions. The seller provides the product without a guarantee of a specific payment amount. The buyer decides how much to pay for the items. (Abstract.)

The discount pricing of O'Hagan is clearly not needed since the system of Murcko allows buyers to pay whatever the buyer wants to pay. That is, why modify the system of Murcko to introduce a concept of a discounted price when it is the buyer that decides how much to pay for a product? Accordingly, Applicant submits that one skilled in the art would not have modified the system of Murcko in view of Benton to include a feature of "calculating a reduced price" as set forth in claims 2, 5, 8 and 11.

Therefore, Applicant submit that, for at least the above reasons, the Examiner has failed to make a *prima facie* case of obviousness.

2. New Claims

With this amendment, Applicant adds claims 38-47. Applicant submits that claims 38-47 are patentable at least by virtue of their respective dependencies, as well as the features set forth therein.

3. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

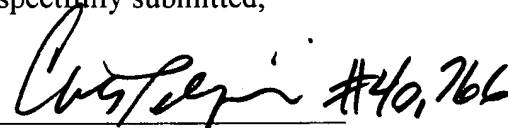

AMENDMENT UNDER 37 C.F.R. § 1.111
Application No.: 09/782,017

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Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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